

ORIGINAL FILED

June 17 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

FORM TO BE USED BY PRISONERS FILING A

PETITION FOR A WRIT OF HABEAS CORPUS

UNDER MONT. CODE ANN. § 46-22-101 et seq.

NAME Randy Lee Plumley

PRISON NUMBER 36117

PLACE OF CONFINEMENT M.S.P. Deer Lodge

CRIMINAL CAUSE NUMBER DC - 1993-10940

FILED

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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Randy Lee Plumley, Petitioner
(Full Name)

v.

Mike Mahoney, Respondent
(Name of Warden, Superintendent, or authorized person
having custody of Petitioner).

Instructions

1. To use this form, you must be imprisoned or otherwise restrained in Montana. Mont. Code Ann. § 46-22-101(1).
2. The petition must be neatly handwritten or typed. You must tell the truth and sign the form. If you make a false statement of a material fact you may be prosecuted for perjury.
3. The petition can be filed either in the district court in the county where you are incarcerated, or in the Montana Supreme Court. If you are filing in the district court, send the original to the clerk of the district court in the county where you are incarcerated. If you are filing in the Montana Supreme Court, send the original to the clerk of the Montana Supreme

Court. Also, mail a copy of the motion to each party listed on the Certificate of Service.

4. Habeas corpus cannot be used to attack the validity of your conviction or sentence. Also, it cannot be used to attack the validity of an order revoking a suspended or deferred sentence. Mont. Code Ann. § 46-22-101(2).
5. To get habeas corpus relief, you must show that your imprisonment or restraint is illegal. For example, you may allege that you will be held beyond your proper release date because of failure to properly award good time or credit for time served; that your sentence exceeds the statutory maximum term; that a decision of the parole board results in longer confinement; or that you are being illegally held without bail.
6. If you have any questions about these instructions or about the form, please seek assistance from the designated legal assistant in the institution. IT IS A VIOLATION OF POLICY FOR INMATES TO REQUEST LEGAL ASSISTANCE FROM OTHER INMATES.

PETITION FOR HABEAS CORPUS RELIEF

1. I was convicted of the following criminal offense(s): 45-5-303
Aggravated Kidnapping
2. Judgment on these offenses was entered on (date) Aug. 31, 1994.
3. I received the following sentence: 20 w/ 10 ss
4. Check one: ☒ I pled guilty to these offenses.
☐ I pled not guilty to these offenses.
5. Check one: ☐ I appealed to the Montana Supreme Court.
☒ I did not appeal to the Montana Supreme Court.

6. Other than a direct appeal from the judgment of conviction, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? () Yes (✓) No.

7. If your answer to question 6 was yes, give the following information:

Name of Court: _____

Nature of Proceeding: _____

Grounds Raised: _____

Result: _____

8. I assert that I am entitled to habeas corpus relief upon the following grounds:

GROUND ONE: Abuse of Discretion

SUPPORTING FACTS: The Hon. J. Larson, 4th Dis. Msta Mt. upon sentencing of my probation violations on Oct. 13, 2005 and Feb. 13, 2009 failed to adhere to 46-18-203(7)(b). I cite Speldrich (243 Mont. 238) and Williams (316 Mont. 140). Even though, both these cases were remanded for resentencing. This would be moot in my case

GROUND TWO: Illegal Sentencing

SUPPORTING FACTS: At both revocations; Oct. 13, 05 & Feb 13 09 the Hon. J. Larson sentenced me to prison followed by another probationary period. In violation of 46-18-203 (7)(a)(i)(ii & iii) I cite Downing (181 Mont 242) and that the sentencing alternatives are meant to be exclusive

GROUND THREE: Remand for resentencing is moot.

SUPPORTING FACTS: Felix v. Mahler ~~195~~ 195 Mont. 3911 Because of improper sentencing my 10 yrs. ended uninterrupted on June 19, 2009. The District Court no longer has jurisdiction over me. I am being held illegally by D.O.C. Mike Mahoney

(Additional grounds and supporting facts can be stated separately and attached to this petition).

Wherefore, Petitioner prays that the Court grant relief to which he may be entitled in this proceeding.

VERIFICATION

STATE OF MONTANA)

: ss.

County of Powell)

I, the petitioner above named, being duly sworn, states as follows:

I have read the foregoing petition for habeas corpus relief and know the contents thereof, and the same is true of my own knowledge, information and belief.

DATED this 15 day of June, 2010


(Signature of Petitioner)

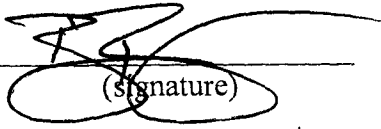
Randy Phumler

CERTIFICATE OF SERVICE

I hereby certify that I served true and accurate copies of the foregoing by
depositing said copies into the U.S. mail, postage prepaid, addressed to the following:

Attorney for *Montana Attorney Gen. / Dept of Corr.*
(address) *PO Box 201401* *70 Box 201301*

DATED this *14* day of *June* 20*10*


(signature)
Randy Plumley